In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Attorney-General, on behalf of the United States, respectfully prays for a writ of *certiorari* to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of § 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891. Said cause arose under the customs administrative act of June 10, 1890, a protest or notice of dissatisfaction having been filed by the importer with the collector of customs for the collection district and port of New York, which protest was overruled by the Board of General Appraisers, to review whose decision a petition was filed by said Alexander Murphy & Co. The circuit court reversed the decision

of said Board, and the judgment of the circuit court was affirmed by the circuit court of appeals for the second circuit.

Amount involved.—I am informed by the Secretary of the Treasury that the amount directly involved in the present case is $520.32, but that the amount indirectly involved and which depends upon its decision is $346,190.10.

The record.—As in other cases arising under the customs administrative act, the record is somewhat informal. It shows importers' protest and the letter of the collector transmitting the papers to the Board of General Appraisers. It also sets out the petition for review of the decision of the Board of General Appraisers by which the proceedings in court were commenced. This petition is signed "Alex. Murphy & Co., petitioners, by Curie, Smith & Mackey, attorneys." It is entitled, "In the matter of the application of Alexander Murphy & Co., for a review of the decision of the General Appraisers as to the rates and amount of duties on certain merchandise imported by them per S. S. *Waesland*. Date of entry, August 30, 1894. Entry No. 126,045." It does not appear on the record whether petitioner is a firm or a corporation, for in these informal proceedings under the customs administrative act it is not customary, nor is it deemed essential, to describe the petitioners with the particularity used in court pleadings. Whether or not this be good practice, no question can be now raised in this case.

Statement of facts.—The goods in question were imported August 29, 1894. They were treated by the col-

lector and by the Board of General Appraisers as dutiable under the tariff act of October 1, 1890, whereas the circuit court and circuit court of appeals have treated them as dutiable under the tariff act of August 28, 1894. The facts relating to them are contained in a stipulation of counsel as follows (Rec., p. 21):

> That the merchandise in controversy is worsted dress goods made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, goat, alpaca, or other animal than sheep.

Tariff provisions.—The goods in question, if dutiable under the act of 1890, should pay 12 cents per square yard and 50 per cent *ad valorem* (par. 395); and if dutiable under the act of 1894, should pay 50 per cent *ad valorem* (par. 283). The latter act took effect August 28. The goods were imported August 29 as above stated. The act provided as follows (par. 297):

> The reduction of the rates of duty herein provided for *manufactures of wool* shall take effect January 1, 1895.

The paragraph just quoted is the last contained under Schedule K in the act of 1894, whose heading is "Wool and manufactures of wool." The schedule, however, contains not only woolen goods, but goods made of the hair of other animals and even (par. 295) of flax or cotton.

In paragraphs 280 to 286, inclusive, it contains a series of provisions relating to yarns, cloths, etc., made wholly or in part of "wool, *worsted*, the hair of the camel, goat, alpaca, or other animals."

Are worsted goods "manufactures of wool" within the meaning of paragraph 297?

The circuit court and circuit court of appeals held:

First. That paragraph 297 above quoted does not cover everything in Schedule K, notwithstanding the heading to that schedule. In this view the Department of Justice entirely concurs. Solicitor-General Maxwell, in an opinion rendered October 9, 1894, held that the paragraph did not cover cotton or flax goods or manufactures of the hair of any animals other than sheep (21 Op., 66).

Second. That worsted goods are not "manufactures of wool" within the meaning of the paragraph quoted, although they are in fact manufactures of the wool of the sheep. It is respectfully submitted that this holding, whereby the United States is deprived of $346,000, is contrary to the plain intent and true meaning of the act of 1894, especially in the case of worsted cloths; and this for the following reasons:

I. There is not, and never has been, any doubt that worsted is a manufacture of wool.

Both the American Encyclopædia and the Encyclopædia Britannica treat of worsted under the head of "wool" and as a manufacture of wool.

Dr. Johnson defined it as "woolen yarn; wool spun." This definition was too broad, but both Webster and Worcester treat it as a variety of yarn or thread, spun of wool.

The Century Dictionary, stating that it is "so called" from Worsted, now Worstead, in Norfolk, where it was first manufactured," gives the following definitions, in

which it substantially coincides with the Imperial and and Encyclopædic Dictionaries:

> I. *n.* and *a.* A variety of woolen yarn or thread, spun from long-staple wool which has been combed and in the spinning is twisted harder than usual [etc.].
>
> II. *a.* Consisting of worsted; made of worsted yarn; as *worsted* stockings.

The distinction between worsted and so-called "woolen" yarns is very difficult to define. The classifications to some extent overlap. The Encyclopædia Britannica (Little, Brown & Co.'s edition, 1888, XXIV, 658), says:

> The fundamental distinction between the classes rests in the crossing and interlacing of the fibers in preparing woolen yarn—an operation confined to this alone among all textiles, while for worsted yarn the fibers are treated, as in the case of all other textile materials, by processes designed to bring them into a smooth, parallel relationship to each other.

In *Cohn* v. *Seeberger* (30 Fed. Rep., 425, 426), Judge Blatchford states the general distinction very clearly:

> Worsted is made by combing long-fibered wools so that the fibers shall lie or be arranged alongside each other, while wool is treated by carding so as to interlap the fibers with each other.

II. The learned district judge (p. 22) fell into the error of saying that the earlier tariff acts "recognized wool and worsted as different materials." This is not the fact. They very distinctly recognized worsted as a manufacture of wool, although dutiable at rates different from those imposed upon manufactures of wool not specifically

provided for. Congress and this court have treated worsted *not as something different from wool, but as a term more specific than wool.* While there are chance expressions in the opinions from which it might be inferred that worsted was not wool, yet the principle of these decisions is clearly the familiar principle that as between different terms, otherwise equally applicable to the same articles, the more specific governs. (See *Bogle* v. *Magone*, 152 U. S., 623, 626, and cas. cit.; *Seeberger* v. *Cohn*, *infra*.)

The tariff act of April 27, 1816, ch. 107 (3 Stat., 310), lays a general duty on "woolen manufactures of all description or of which wool is the material of chief value, *excepting* blankets, woolen ru[illegible]nd *worsted stuff goods*." The tariff act of May 22, 18[illegible] ch. 126 (4 Stat., 25), uses substantially similar language. The tariff act of May 19, 1828, ch. 55 (4 Stat., 271, 272), lays a schedule of rates on manufactures of wool "*except* carpetings, blankets, *worsted stuff goods*, bombazines, hose, mitts, gloves, capes, and beltings."

The provision first discussed by this court was the second paragraph of the tariff act of July 14, 1832, ch. 227, § 2 (4 Stat., 584). This paragraph is headed "On manufactures of wool or of which wool is a component part." It lays special rates on worsted stuff goods, shawls, and other manufactures of silk and worsted, on worsted yarn, on woolen yarn, and on other articles specially named; and it winds up with a general provision concerning "all other manufactures of wool or of which wool is a component part, and ready-made clothing."

It will be noticed that a distinction is made between *worsted* and *woolen* in the act, although both are rated as *manufactures of wool*. In *Elliott* v. *Swartwout* (10 Pet., 137, 152) the court uses language somewhat loosely, as if worsted was not a manufacture of wool; but by familiar rules this language must be "read in the light of the facts of the case." (*Barney* v. *Rickard*, 157 U. S., 352, 364; *Sonn* v. *Magone*, 159 U. S., 417, 423.) The question before the court was whether the definition of "worsted" in the statute should be determined by its commercial designation; and it was admitted in the record "that worsted is made out of wool by combing, and thereby becomes a distinct article, well known in commerce under the denomination of worsted."

Subsequent tariff acts up to the present time have mentioned worsted as well as wool; but in a hundred other familiar instances as well, Congress has used specific as well as general terms applicable to the same article. Worsted has always been included under the wool schedule; nor has Congress ever indicated that it supposed worsted to be anything else than a manufacture of wool.

In *Seeberger* v. *Cahn* (137 U. S., 95, 97) this court recognizes that "worsted is doubtless a product of wool;" and while the court said that "a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute," it evidently had in mind the rule of interpretation just previously stated, as follows:

> That when goods of a particular kind, which would otherwise be comprehended in a class, are subjected to a distinct rate of duty from that imposed upon the class generally, they are taken out of that class for the purpose of the assessment of duties.

Thus neither our past tariff legislation nor our judicial decisions require cloths made of wool to be treated as if they were not made of wool, simply because the fibers lie alongside of each other, instead of being interlaced, in the yarn of which the cloths are made.

We shall now endeavor to show that—

III. The construction given to this act by the lower courts is contrary to its plain intent.

On what theory can Congress possibly be supposed to have desired a postponement of the reduction of duties on woolen goods, technically so called, until January 1, 1895, while the reduced duties were to go immediately into effect upon worsted goods in August, 1894?

There was only one possible reason for the action of Congress in postponing the reduction of rates. The act of 1894 suddenly abolished, among other high duties, those which had so long prevailed with respect to wool. The only possible reason for postponing the reduction of duties on woolen goods was the injustice which manufacturers of these goods would suffer, in case they had already laid in a large stock of raw material, which they still had on hand. It must therefore be presumed that Congress, while deliberating upon the new tariff bill, had ascertained that woolen manufacturers were carrying a stock of raw material which equitably they should be allowed a few months' time to work off.

This court can take judicial notice of facts generally known. It is generally known that manufacturers of wool were carrying such a stock, so that it would have been inequitable to put the new duties on manufactures

of wool directly into operation. Their case was one especially calling for special attention in this, that under the previous acts the duties on woolen manufactures were "compound," containing not only an *ad valorem* rate, but also a specific rate, which latter was regarded as compensatory for the duties paid by the manufacturers upon the raw material, and that this specific rate was to be stricken out for the precise purpose of abolishing what would be a mere gratuity when the duties upon the raw material should be abolished.

The only purpose, therefore, which can possibly be imputed to Congress in postponing the reduction of duties on manufactures of wool is applicable to worsted goods as fully as to any of the other manufactures. It may be asked why hair goods were not similarly treated, but there may not have been such a stock of imported hair on hand.

It must be remembered that there is no such article as "worsted," pure and simple. While "worsted" is familiarly used as a noun, from which it might be supposed that there was a specific article called "worsted" out of which worsted goods were manufactured, this is not the fact. There are "worsted yarns," "worsted cloths," etc., but there is no "worsted" as distinguished from the yarns or the cloths. The "guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed." * * * (*Holy Trinity Church* v. *United States*, 143 U. S., 457, 463; *United States* v. *Union Pacific R. R. Co.*, 91 U. S.,

72, 79; *United States* v. *Perry*, 146 U. S., 71, 73; *People* v. *Supervisors*, 43 N. Y., 430); and the intent of the legislature governs the construction even of a penal statute. (*United States* v. *Lacher*, 134 U. S., 624.)

IV. Whatever might be the case as to worsted yarns, the articles now in question are to be classified as woolens, on account of the so-called Dingley Act of May 9, 1890, ch. 200, discussed in *United States* v. *Ballin* (144 U. S., 1), which provides—

> That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the names of worsted or diagonals, or otherwise.

This act has never been expressly repealed (*Henderson's Tobacco*, 11 Wall., 621, 656); and the authorities are overwhelmingly opposed to the theory that it has been repealed by implication. (*Stuart* v. *Maxwell*, 16 How., 150; *United States* v. *67 Packages*, 17 How., 85; *Ex parte Crow Dog*, 109 U. S., 556; *Saxonville Mills* v. *Russell*, 116 U. S., 13; *Chicago Railway Co.* v. *United States*, 127 U. S., 406, 409; *Coke* v. *Coke*, 137 U. S., 682, 686; *Frost* v. *Wenie*, 157 U. S., 46, 58.)

I respectfully submit that the decisions of the lower courts rest upon a purely artificial and technical construction of the statute; and that, as they involve a heavy loss to the United States Treasury, a writ of *certiorari* should be granted.

A certified copy of the entire record of the case in the circuit court of appeals, including the opinion, is filed as part of this application. Notice of the application has been given to the appellees' counsel.

JUDSON HARMON,
Attorney-General.

APRIL 10, 1896.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 498.

THE UNITED STATES, APPELLANT,

vs.

ALEXANDER MURPHY & CO.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	A	1
Transcript from the circuit court of the United States for the southern district of New York	1	1
Petitition of importer	2	1
Bond for damages and cost	4	2
Summons to return record	6	3
Return of Board of Appraisers	7	4
Exhibit A. Letter, collector to Board of United States General Appraisers, submitting protest	9	5
Exhibit B. Protest	10	5
Exhibit C. Opinion of Board of United States General Appraisers.	11	6
Petition and order of reference (importer)	16	9
Petition and order of reference (collector)	18	10
Stipulation and further evidence	20	11
Opinion of court, Townsend, J	22	12
Judgment of reversal	28	15
Assignment of errors	29	15
Notice of appeal	31	16
Petition of appeal and allowance	32	17
Citation	34	18
Clerk's certificate	35	18
Opinion	36	19
Judgment	40	21
Clerk's certificate	41	21
Writ of certiorari	42	22
Stipulation as to return to certiorari	45	22
Clerk's certificate and return	64	23

a United States court of appeals for the second circuit. The United States, appellant, *vs.* Alexander Murphy & Co., appellees. [No. 2107.] Transcript of record. Appeal from the circuit court of the United States for the southern district of New York. Printed under the direction of the clerk. United States circuit court of appeals, second circuit. Filed Aug. 20, 1895. James C. Reed, clerk.

1 United States circuit court for the southern district of New York. In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Waesland." Date of entry, Aug. 30/94. Entry No. 126045. 72602-A—12691.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Alexander Murphy & Co., being dissatisfied with a decision made on or about the 17th day of September, 1894, by the Board of General Appraisers designated by the Secretary of the Treasury, for and on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as
2 to the rate and amount of duty chargeable on certain merchandise imported at said port by your petitioners as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of worsted dress goods. The same was classified and assessed by said collector for duty at the rate of 12 cts. per sq. yd. and 50% ad valorem. Your petitioners being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for their objection thereto, claiming the said merchandise to be dutiable under Schedule K of the tariff act of August, 1894, paragraph 283, at 40% or 50% ad valorem, according to the value thereof.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said Board herein complained of, your petitioners say:

First.—That said Board of Appraisers erred in not finding as matters of fact, that worsted is and has been in this country for many years, a well recognized, separate, and distinct commodity from wool, and that this distinction has been and is, both a popular and commercial distinction.

Second.—That said Board of Appraisers erred as matters of law:

(a) In not holding that worsted is not wool, and that worsted goods are not woolen goods.

(b) In holding as follows: "We hold, therefore, that paragraph 297, in its scope and application, is as broad as the title of the schedule, and applicable to all merchandise provided for therein;
7 3 that duty upon the dress goods in question was lawfully imposed under the provisions of paragraph 395 of the act of October 1st, 1890, which as to such merchandise continues in force until January 1st, 1895."

(c) In overruling your petitioners' protest.

(d) In not holding that said merchandise was dutiable under Schedule K of the tariff act of August, 1894, paragraph 283, at 40% or 50% ad valorem, according to the value thereof.

Accordingly, your petitioners respectfully pray the court to order the said Board of General Appraisers to return to the court the record
8 and evidence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision, and to determine the questions of law and fact involved in the same.

Dated, New York, Oct. 15, 1894.

ALEX. MURPHY & CO.,
Petitioners.

By CURIE, SMITH & MACKIE,
9 *Attorneys, 44 and 46 Exchange Place, New York City.*

(Endorsed:) 2107. United States circuit court for the district of New York. In the matter of the application of Alex. Murphy & Co., for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Petition. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Oct. 15, 1894. John A. Shields, clerk.

10 4 Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in the sum of fifty dollars, to be paid to the said United States of America.

For the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with my seal and dated the 13th day of October, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas, Alexander Murphy & Co. have applied to the circuit court of the United States for the southern district of New York, for
11 a review of the questions of law and fact involved in certain decisions of the Board of United States Appraisers, made upon the entry of certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. T26045.

Now, therefore, the condition of this obligation is such that if the above-named Alexander Murphy & Co. shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded

against them therein if they shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

[SEAL.] WM. H. NORTHUP. 12

Sealed and delivered and taken and acknowledged, this 13th day of October, 1894, before me.

[SEAL.] THOS. H. THOMPSON,
Notary Public, Kings County.

Certificate filed in New York Co.

5 UNITED STATES OF AMERICA, 13
Southern District of New York, ss:

William H. Northup, being duly sworn, deposes and says that he does business in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

WILLIAM H. NORTHUP.

Sworn to this 13th day of Oct., 1894, before me,

[SEAL.] THOS. H. THOMPSON,
Notary Public, Kings County. 14

Certificate filed in New York Co.

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, Oct. 15, 1894.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 2107. United States circuit court for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the General Appraisers, 15 as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Bond for costs on application for review. Curie, Smith & Mackie, attorneys for the petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court, filed Oct. 15, 1894. John A. Shields, clerk.

6 At a stated term of the United States circuit court for the 16 southern district of New York, held at the United States court and post-office building, in the city of New York, on the 15th day of October, 1894.

Present, Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, 17 &c., of duties on certain merchandise imported by them per "Waesland," Aug. 30/94. 126045.

Upon reading and filing the annexed petition of Alexander Murphy & Co., importers of the merchandise therein described, and on motion of Curie, Smith & Mackie, attorneys for said petitioners,

It is ordered that the Board of Appraisers at the port of New York return to this court the record and the evidence taken by them
18 in each of the above-entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 2107. United States circuit court for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Summons to return record. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Oct. 15, 1894. John A. Shields, clerk.

19 7 In the circuit court of the United States for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the Board of General Appraisers as to the rate and amount of duty on certain merchandise imported by them in the vessel "Waesland," Aug. 30, 1894. Suit No. 2107. Return of the Board of United States
20 General Appraisers to the order of Hon. E. Henry Lacombe, circuit judge. Dated New York, October 19th, 1894.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them:

21 They state that a letter (hereto annexed, marked Exhibit A) was received from the collector of customs at New York, submitting, under the provisions of sec. 14 of the act of June 10, 1890, the protest marked Exhibit B, described as follows:

Collector's No.	Board No.	Protestant.	Vessel.	Dt. entry.
12691.	72602—A.	A. Murphy & Co.	"Waesland."	Aug. 30/94

22 8 That on the 17th day of September, 1894, the Board of General Appraisers rendered its decision in the matter of said protest No. 72602—A, a copy of which decision is hereto annexed, marked Exhibit C.

And in the examination and decision of this case the Board had under consideration Ure's Dictionary of Arts, Manufactures, and Mines, seventh edition, volume 1, page 105, under the title Alpaca.

Also same work, volume 3, p. 135 et seq., under the title Llama.
23 Also same work, volume 3, p. 359 et seq., under the title Mohair.

Also same work, volume 3, p. 1184, under classification of Woolen Manufacture.

Also Spous' Encyclopædia of the Industrial Arts, Manufactures, and Raw Commercial Products, vol. 2, p. 2047 et seq., under the title Woolen Manufactures.

Also reports from the consuls of the United States, June, 1887,
24 No. 79.

9

EXHIBIT A.

25

OFFICE OF THE COLLECTOR OF CUSTOMS,
PORT OF NEW YORK,
September 13, 1894.

Hon. BOARD OF GENERAL APPRAISERS,
Port of New York.

GENTLEMEN: I transmit herewith protest No. 12691, of Alexander Murphy & Co., from the assessment of duty as made by this office on certain merchandise covered by their consumption entry, No. 126045, which consumption entry was made by them on August 29, 1894, the goods being imported the same day.

26

Claim is made by the protestants that the merchandise is liable to duty under paragraph 283 of the act of August 28, 1894.

The merchandise was returned by the appraising officer as worsted dress goods; hence, in the liquidation of the entry, duty at the rate of 12 cents per square yard and 50 % ad valorem was imposed by this office, under the specific provisions of par. 395 of the act of October 1, 1890.

The action of this office in assessing duty under paragraph 395 of the act of October 1, 1890 (although the goods were imported after the act of August 28, 1894, went into effect), was by reason of the specific provisions of par. 297 of the act of August 28, 1894, as 27 defined by the honorable Secretary of the Treasury in his telegram to this office dated August 27, 1894, Department's Circular No. 125.

The entry and invoice covered by the above protest are enclosed herewith.

Respectfully, yours,

JAMES T. KILBRETH,
Collector.

(Enclosures.)

(Endorsed:) 45709 Po. Office U. S. General Appraisers, New York. Received Sep. 13, 1894, 3.50 p. m. No. of inclosures, 3. E. D. W.

10

EXHIBIT B.

28

NEW YORK, *September 15, 1894.*

Hon. JAMES T. KILBRETH,
Collector of Customs, New York.

SIR: We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importation herewith enumerated and described in the entries thereof, reference to which is made for more certainty of description and particulars.

We claim that the extension of the date for the reduction of rates of duties provided for by paragraph 297 of Schedule K of said act of August 8, 1894, applies only to such manufactures of wool as are 29 not specially mentioned in the aforesaid Schedule K, and particularly excludes all manufactures, whether specially named in said Schedule K or not, composed wholly or in part of worsted, the hair of the camel, goat, alpaca, or other animals. We claim that the proper rates

of duty to be assessed under said act of August 27th, 1894, on the importations herein mentioned are as follows:

On dress goods, coat linings, Italian cloths, bunting, and goods of similar description and manufacture, at 40 per cent, or 50 per cent ad valorem, according to value, under paragraph 283.

We have paid these duties for the purpose of obtaining possession
30 of our goods, and shall hold you and the Government responsible for all excess of duty illegally exacted.

Vessel.	From.	No. of entry.	Date of liq'dn.	Marks and numbers of packages.	Date of payment.
Str. "Waesland."	Antwerp.	126045.	Sept. 13/94.	[B] 1082, 1085, & 1087—3 cases black serges.	Aug. 30/94.

Duties assessed at 12c., or 50 %, under paragraph 395 of tariff act of Oct. 1, 1890.

ALEX. MURPHY & Co.

Please address, care Alex. Murphy & Co., 48 Exchange Place, New York.

72602.

31 11 (Endorsed:) 12691. A. Murphy & Co. "Waesland." Wool dress goods. 45709 Po. Vessel, e "Waesland." Entry, 1894, Aug. 30; liq'ed, 1894, Sept. 13; protested, 1894, Sept. 13. 72602. Custom-house, New York, Sept. 13, 1894, received.

EXHIBIT C.

(G. A. 2769.)

[Act of 1894—Date of going into effect of wool schedule.]

Before the U. S. General Appraisers at New York, September 17,
32 1894.

In the matter of the protest 72602A—12691, of Alex. Murphy & Co., against the decision of the collector of customs at New York, as to the rate and amount of duties chargeable on certain women's and children's dress goods, operation of wool schedule, imported per "Waesland," August 30, 1894.

Opinion by Sharretts, General Appraiser.

We find—

(1) That Messrs. Alex. Murphy & Co. imported into the port of
33 New York, August 20, 1894, certain merchandise which was assessed for duty at 12 cents per square yard and 50 per cent ad valorem, under the provisions of paragraph 395 of the act October 1, 1890, and which the importers claim is dutiable at 40 per cent or 50 per cent ad valorem, according to value per pound, under paragraph 283 of the tariff act of August 28, 1894.

(2) That said merchandise consists of fabrics commercially known as women's and children's dress goods, composed of worsted weighing less than 4 ounces to the square yard.

12 The importers state in their protest generally the claim— 34

That the extension of the date of the reduction of rates of duties provided for by paragraph 297 of Schedule K of the act of August 28, 1894, applies only to such manufactures of wool as are not specially mentioned in the aforesaid Schedule K, and particularly excludes all manufactures whether specially named in said Schedule K or not, composed wholly or in part of worsted, the hair of the camel, goat, alpaca, or other animals.

In undertaking to construe the force and effect of paragraph 297, it is proper to take into consideration the tariff law which had been in force some time previous to the new enactment, and to consider the 35
reasons which led Congress to make a specific provision concerning the date when the new Schedule K should go into effect. It is matter of common knowledge, and is shown in the proceedings in Congress in enacting the present law making a reduction in the high rates of duty previously in force, that both manufacturers and dealers had in stock large quantities of merchandise upon which they had paid high rates of duty to the Government; that the raw material entering into the fabrication of the merchandise covered by Schedule K had been subject to such rates of duty, and that any merchandise fabricated therefrom, if put upon the market when lower rates were 36
in vogue, would cause great loss, if not ruin, to many individuals; and, therefore, to allow all interests to adjust their business to the new rates, a future date was named when they should go into effect, postponing the time sufficiently to allow the marketing of merchandise in hand, or which might be fabricated from the raw materials previously imported.

If, then, we look to the reasons which governed Congress in making this provision, we shall find that the former high rates of duty applied to all the animal fibers mentioned in paragraphs 376
13 to 378 inclusive, of the tariff act of 1890, and to all manufactures thereof. Schedule K in the act of 1890, as in the act 37
of August 28, 1894, is entitled "Wool and manufactures of wool," and embraces therein substantially all merchandise composed of fibers or fleeces from animals. "Manufactures of wool" is not a term of commercial designation, but as used in the title of the schedule and in paragraph 297, declaring the date when it shall go into effect, it is a broad, general, and comprehensive designation covering all manufactured products specified in the schedule, embracing goods fabricated from wool, or from wool which has been converted into worsted, or from the hair of the camel, goat, alpaca, or other animals.

The popular definitions of the various fibers referred to in the 38
schedule indicate that the words "manufactures of wool" are comprehensive. The definition of wool, as given in the Century Dictionary, is as follows:

"The fine, soft, curly hair which forms the fleece or fleecy coat of the sheep and some other animals, as the goat and alpaca, in fineness approaching fur."

Webster:

Alpaca—A thin kind of cloth made from the wool of the Alpaca."

"Mohair—The long silky hair or wool of the Angora goat."

39 "Worsted—Well-twisted yarn spun of long-staple wool which has been combed to lay the fibers parallel."

We have to some extent a legislative construction of the meaning of the word "woolen," in paragraph 280, showing what Congress understood broadly as embraced within the term, for it is therein provided that "on woolen and worsted yarns, made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals," duty shall be levied as therein specified, thus showing that the hair of the camel, goat, alpaca, or other animals is included within the broader term of woolen.

40 14 According to the claims of the importers, paragraph 297 only affects one item, which is contained in paragraph 283, namely: "All manufactures composed wholly or in part of wool * * * not specially provided for in this act."

Such a narrow construction of the act we must at once reject as contrary to the intention of Congress. The true purpose of this legislation can be carried into effect by a broad and liberal interpretation of the provision as applied to all the circumstances and conditions designed to be remedied thereby. It was first provided in the House bill, known as the Wilson bill, that:

41 "The reduction of the rates of duty herein provided for manufactures of wool shall take effect December second, eighteen hundred and ninety-four, and on all rates of duty in the woolen schedule, except on carpets, there shall be a reduction of one per centum ad valorem, to take effect on the first day of July, eighteen hundred and ninety-six, and thereafter of a like discount on the first day of July, eighteen hundred and ninety-seven, eighteen hundred and ninety-eight, eighteen hundred and ninety-nine, and nineteen hundred, respectively."

This paragraph as it now appears was amended in the Senate simply to extend the date when the schedule should go into effect, and to
42 eliminate the annual reduction of 1 per cent provided in the House bill.

It is our opinion that it was the intention of Congress that Schedule K, of the act of August 28, 1894, should, on the 1st day of January, 1895, supersede the provisions of Schedule K of the act of 1890 in the dutiable classification of all the manufactures specified in that schedule of the latest act, but that, where it has omitted to provide in Schedule K of the latest act, either in general terms or denominatively, for the merchandise provided for in Schedule K of the act of 1890, the goods so omitted, which consist mainly of raw mate-
43 15 rial, are exempted from duty in the free list of the new act, or elsewhere provided for.

We hold, therefore, that paragraph 297 in its scope and application is as broad as the title of the schedule, and applicable to all merchandise provided for therein; that duty upon the dress goods in question was lawfully imposed under the provisions of paragraph 395 of the act of October 1, 1890, which, as to such merchandise, continues in force until January 1, 1895.

The protest is overruled.

(Sd.) WILBUR F. LUNT,
J. B. WILKINSON, Jr.,
44 THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

WILBUR F. LUNT,
J. B. WILKINSON, Jr., 45
Board of U. S. General Appraisers.

(Endorsed:) No. 2107. U. S. circuit court, southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the Board of U. S. General Appraisers as to the rate and amount of duty on certain imported merchandise. Return of the Board of U. S. General Appraisers. U. S. circuit court. Filed Oct. 20, 1894. John A. Shields, clerk.

16 United States circuit court, southern district of New York. 46

In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per 47 S. S. "Waesland," Aug. 30/94. No. 2107.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Alexander Murphy & Co., respectfully represent:

First. That a return from the Board of United States General Appraisers in the above-entitled matter was filed in the office of the clerk of this court on the 20th day of October, 1894. 48

Second. That your petitioners desire to present further evidence in the above-entitled matter.

Wherefore, your petitioners pray that an order be made referring said matter to one of the General Appraisers, to take and return to said court such further evidence as may be offered.

Dated Nov. 3d, 1894.

ALEXANDER MURPHY & CO.,
By CURIE, SMITH & MACKIE,
Atty's.

17 Upon reading and filing the foregoing petition of Alexander 49 Murphy & Co., and on motion of Curie, Smith & Mackie, attorneys for said petitioners,

It is ordered that the above-entitled matter be, and the same hereby is, referred to General Appraiser George H. Sharpe, to take and return to this court such further evidence as may be offered in said matter.

Dated Nov. 3d, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 2107. United States circuit court for the south- 50 ern district of New York. In the matter of the application of Alex.

Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Petition and order for further evidence. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed
51 Nov. 3, 1894. John A. Shields, clerk.

52 18 United States circuit court, southern district of New York.
In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Suit "A," No. 2107.

53 *To the circuit court of the United States for the southern district of New York:*

The collector of the port of New York hereby applies for an order referring it to one of the U. S. General Appraisers, as an officer of the court, to take and return to the court such further evidence as may be offered by him.

WALLACE MACFARLANE,
54 *U. S. Attorney, Attorney for the Collector.*

55 19 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building in the city of New York, on the 9th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present, the Honorable E. Henry Lacombe, circuit judge.

56 In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Suit "A," No. 2107.

On the annexed application of the collector of the port of New York, through his attorney, Wallace Macfarlane, U. S. attorney for the southern district of New York.

It is ordered that this cause be referred to Geo. H. Sharpe, one of the U. S. General Appraisers, as an officer of the court, to take and return
57 to the court such further evidence herein as may be offered by the said collector, and that the importers or their attorneys have reasonable notice of the time and place of taking such further evidence.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) Suit "A," No. 2107. U. S. circuit court, southern district of New York. In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Application and order to take further evidence. Wallace Macfarlane, U. S. atty. and atty. for collector. U. S. circuit court, filed Nov. 10, 1894. John A. Shields, clerk.

20 United States circuit court, southern district of New York. 58

THE UNITED STATES OF AMERICA, appellant,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN AND John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. } Suit "A," 2107. 59

Stipulation.

It is hereby stipulated by and between the counsel for the respective parties hereto that the following shall constitute the evidence taken and returned by Hon. George H. Sharpe, referee, appointed by the court herein.

"NEW YORK, *May 3, 1895.* 60

"Appearances:

"For the collector and Government: James T. Van Rensselaer, assistant U. S. attorney.

"For the importers: Curie, Smith & Mackie. (W. Wickham Smith, of counsel.)

"Mr. VAN RENSSELAER. I offer in evidence the import entry by steamer "Waesland," August 29, 1894, No. 126045, with accompanying invoice, No. 18683.

21 "Received and marked respectively Exhibit 1 and Exhibit 61 1–1.

"It is admitted by counsel for both parties hereto that the classification of the merchandise by the collector was worsted dress goods, at 12 cents per square yard and 50 per cent ad valorem, under Schedule K, paragraph 395 of the tariff act of October 1, 1890.

"It is further conceded and stipulated by counsel for the respective parties hereto that the merchandise in controversy is worsted dress goods, made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, 62 goat, alpaca, or other animal than sheep."

Dated New York, July 9th, 1895.

WALLACE MACFARLANE,
U. S. Attorney, for Appellant.

CURIE, SMITH & MACKIE,
Attorneys for Appellees.

(Endorsed:) Suit A, No. 2107. U. S. circuit court, southern district of New York. United States of America, appellant, vs. Alexander Murphy & Co. Stipulation. Wallace Macfarlane, United States attorney, attorney for appellant. U. S. circuit court, filed Jul. 11, 1895. John A. Shields, clerk. 63

64 22 United States circuit court, southern district of New York.

ALEXANDER MURPHY ET AL.
vs.
THE UNITED STATES.

Townsend, district judge:

65 On August 30th, 1894, appellants imported and entered for duty at the port of New York certain worsted dress goods.

The importers claimed they were dutiable at 50 per cent ad valorem, under paragraph 263, Schedule K of the tariff act of August, 1894.

They were classified for duty at 12 cents per square yard and 50 per cent ad valorem, under the provisions of paragraph 395, Schedule K of the tariff act of October 1st, 1890.

The Board of General Appraisers sustained the assessment, and the importers appealed. The single question presented by the appeal is
66 whether these goods are dutiable under the earlier or later act.

It is admitted that these goods are made from the fleece of the sheep, and are in that sense a product of wool.

The earlier tariff acts provided rates of duty on manufactures of wool different from those on manufactures of worsted, and recognized wool and worsted as different materials. The tariff acts of 1890 and 1894, while retaining the distinction in terminology, provide the same rates of duty for woolen as for worsted goods.

The courts have repeatedly recognized and enforced this
67 23 distinction between wool and worsted, and have uniformly held that the manufactures of worsted were not manufactures of wool within the meaning of the tariff acts. Elliott v. Swartwout (10 Peters, 137); Riggs v. Frick (Taney, 100); Seeberger v. Cahn (137 U. S., 95); Ballin v. Magone (41 Fed., 921).

It is urged on behalf of the Government that the term "manufactures of wool" is used descriptively and not denominatively in this act of 1894. Paragraph 297 of said act reads as follows:

"The reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1st, 1895."

68 The heading of said Schedule K is "Manufactures of wool."

In support of his contention counsel for the Government introduced in evidence various official documents, letters to the chairman of the Finance Committee of the Senate, and other papers, tending to show that the same reasons existed for a postponement of duties on all the products of the sheep's fleece.

It appears, however, that in the tariff bill as it first passed the House of Representatives there was a further provision applying to all rates of duty in the woolen schedule except carpets, which provision
69 was afterwards stricken out in the Senate.

Counsel for the Government further claims that the distinction between wool and worsted in the decision cited is based upon the fact that Congress had in these earlier acts created and preserved the distinction for tariff purposes, thus creating a statutory as contrasted with a commercial distinction, and that as this artificial distinction no longer exists it should not be applied in the construction of the present act.

But the distinction in terminology, as already shown, has
24 been uniformly preserved, and in Ballin v. Magone (41 Fed., 70
921), Judge Lacombe, referring to the provisions of the act of
1883, says:

"The tariff act itself, however, recognizes a difference between woolen and worsted articles—between goods composed of worsted and goods composed of wool. We find the words 'wool' or 'woolen' and 'worsted' used in contrast at least six times in this very schedule, and the examination of successive tariff acts back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words 'woolen cloths,' used in the paragraph on which the defendant relies, are to be taken as including only those 71
woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, 'worsted,' or 'composed of worsted'), as used in this tariff."

In five of the instances above referred to as illustrations of this distinction the rates of duty were the same.

The schedule in question is entitled "Wool and manufactures of wool." It is well settled that the title of an act may legitimately be resorted to as an aid in determining legislative intent when that intent is otherwise ambiguous.

But the Supreme Court of the United States has recently held, in Hollender v. Magone (149 U. S., 586), and Seeberger v. Schlesinger 72
(152 U. S., 581, 1583), that such titles to the schedules in a tariff act are merely intended as general suggestions of the character of the articles within such schedule.

Under the above title are included not only articles made from the fleece of sheep, but also those made from the hair of the camel, goat, alpaca, and other animals, and certain manufactures of flax and cotton. It is not claimed by the Government that the paragraph in question refers to goods made from the hair of animals other than sheep, or to any goods except such as are composed of wool or worsted.

25 In Reiche v. Smythe (13 Wall., 162, 164), and Maddock v. 73
Magone (152 U. S., 368, 371), it is held, in reference to the construction of tariff acts, that when the same word is used in successive acts, and special meaning was attached to said word in the former act, it will be presumed, in the absence of evidence of a contrary intention, that it was intended that said word should receive the same interpretation in the later act.

It is claimed by the Government that such evidence of a contrary intention is furnished in this case by the policy of the Government, as indicated in the letters and official documents already referred to, and in the consideration of inconvenience which would arise from 74
the construction contended for by the importer.

That the distinction was directly brought to the attention of Congress and acted upon by it; that Congress has failed to use the word "worsted" in said paragraph 94; that under the title "Wool and manufactures of wool" are included articles not composed of wool, strongly suggest that Congress may not have intended to include "worsted" under "manufactures of wool," and seem to rebut the

claim of the counsel for the Government that Congress intended to give to the word "wool" a different signification from that which it had previously borne.

75 The opinion of the Supreme Court of the United States in Bate Ref. Co. v. Sulzberger et al. states the guiding principles of construction and interpretation in such a case.

The court there holds that when the language of an act is explicit there is great danger in departing from the words actually used in order to give effect to the supposed intention of the legislature, and that in such circumstances the court should not so construe the statute as to embrace cases, because no good reason can be assigned why they were not included within its provisions.

76 26 The court further emphasizes the rule that it is not for the court to add to or substract from the express provisions of the law, but only to interpret the law as it rests, leaving to Congress to make provision for cases where such enactment may operate unjustly.

In view of the failure of Congress to make any distinction between the various classes of articles in said schedule, other than by the use of a word in the title, which by the settled definition of courts and legislature excluded the articles in question, and in the absence of any positive evidence of intention to include said articles within the provisions of said paragraph, I think it would be a violation of the
77 principles of construction and interpretation to extend the language of said paragraph so as to include "worsted dress goods."

The decision of the Board of General Appraisers is reversed.

(Endorsed:) U. S. circuit court, southern district of New York. No. 2107. Alex. Murphy et al. vs. The United States. Opinion. Townsend, J. U. S. circuit court. Filed Jun. 10, 1895. John A.
78 Shields, clerk.

79 27 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building in the city of New York on the 24th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Present, the Hon. William K. Townsend, judge.

80 In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," August 30, 1894. No. 2107.

The above cause coming on for hearing and determination before this court on the application of the above-named importers, for a
81 review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon. And on the additional evidence taken before General Appraiser Sharpe.

Now, after hearing W. Wickham Smith, of counsel for importers, appellants, for reversal, and Jas. T. Van Rensselaer, assistant U. S. attorney, on behalf of the collector, for affirmance:

28 On motion of Curie, Smith & Mackie, attorneys for importers, appellants, it is 82

Ordered, adjudged, and decreed that there was error in said proceedings before said Board of General Appraisers, and that their decisions herein be and the same are hereby in all things reversed; and that said merchandise was properly dutiable at 50% ad valorem, under paragraph 283, Schedule K, tariff act of August, 1894.

WM. K. TOWNSEND,
U. S. Judge.

Form assented to.

WALLACE MACFARLANE, 83
U. S. Attorney.

(Endorsed:) No. 2107. United States circuit court, southern district of New York. In the matter of the application of Alexander Murphy & Co., for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per "Waesland," Aug. 30, 1894. Judgment of reversal. Curie, Smith & Mackie, atty's for importers, 46 Exchange Place, N. Y. City. U. S. circuit court. Filed Jun. 25, 1895. John A. Shields, clerk. 84

29 United States circuit court of appeals for the second circuit. 85

UNITED STATES OF AMERICA, APPELLANT,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, appellees. } "A," 2107. 86

Assignment of errors.

The United States of America, appellant, hereby assigns error to the decision and judgment of the circuit court of the United States for the southern district of New York herein, in the following particulars:

First. In that it ordered, adjudged, and decreed that the decision of the Board of U. S. General Appraisers herein should be reversed, and that the merchandise involved should be dutiable at fifty per cent 87 ad valorem, under Schedule K, paragraph 283, of the tariff act of August 28th, 1894.

Second. In that, having found that "It is admitted that these goods are made from the fleece of the sheep, and are in that sense a product of wool, the court did not find and decide as matter of fact that the merchandise was worsted dress goods and was woolen cloths within the common meaning of those words.

Third. In that it did not decide as matter of fact that the goods were manufactures of wool within the common signification of those words.

88 30 Fourth. In that it did not decide as matter of law that the term "manufactures of wool" used in the title to Schedule K, and in paragraph 297 of the tariff act of August 28th, 1894, was used in the common and ordinary meaning of those words, and not in any commercial, technical, or restricted sense, as applying only to a limited class of manufactures from the fleece of the sheep.

Fifth. In that it did not decide as matter of law that the Congress of the United States, by successive acts of legislation and particularly in the tariff act of August 28th, 1894, October 1st, 1890, and by the act of May 9th, 1890, Chap. 200, entitled "An act pro-
89 viding for the classification of worsted cloths as woolens," has given a legislative construction to the meaning of the term "manufactures of wool," for the purposes of tariff duties, sufficiently broad to include the worsted dress goods in question; and that the said act of May 9th, 1890, was unrepealed.

Sixth. In that it did not decide as matter of law that paragraph 297 of Schedule K of the tariff act of August 28, 1894, postponed the taking effect of the duties provided for in that act as to merchandise of the character of the worsted dress goods in question until January 1st, 1895, and that the goods included in the present impor-
90 tation were properly dutiable under the appropriate provisions of the tariff act of October 1, 1890, as decided by the collector of customs at the port of New York and the Board of U. S. General Appraisers.

Seventh. In that it did not in all things affirm the decision of the said Board of U. S. General Appraisers herein.

Dated New York, June 26th, 1895.

WALLACE MACFARLANE,
United States Attorney in behalf of the United States of America, Appellant, Room 50, Post-Office Building, New York City, N. Y.

91 31 (Endorsed:) "A," Suit No. 2207. U. S. circuit court of appeals for the second circuit. The United States of America, appellant, vs. Alexander Murphy & Co., appellees. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for appellant. U. S. circuit court. Filed Jun. 27, 1895. John A. Shields, clerk.

United States circuit court, southern district of New York.

92 THE UNITED STATES OF AMERICA, appellant, *vs.* JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and JOHN E. HEYWOOD, composing the copartnership of Alexander Murphy & Company, appellees.	"A," Suit No. 2107.

Please take notice that the undersigned, on behalf of the collector of the port of New York and on the part of the United States,

hereby appeals from the decision of this court, rendered herein and 93
entered on the 25th day of June, 1895, to the United States circuit court of appeals for the second circuit.

Dated, New York, June 27th, 1895.

Yours, &c.,

WALLACE MACFARLANE,
U. S. Attorney for the Southern District of N. Y.,
Room 50, Post Office Building, New York City.

To JOHN A. SHIELDS, *Clerk*, and
CURIE, SMITH & MACKIE, Esqs.,
Attorneys for Importers.

32 (Endorsed:) "A," Suit No. 2107. U. S. circuit court, 94
southern district of New York. The United States of America, appellant, vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Company, appellees. Notice of appeal. Wallace Macfarlane, U. S. attorney. Due service of a copy of the within notice of appeal is hereby admitted. Dated, New York, June 27th, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. To Curie, Smith & Mackie, esqs., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

United States circuit court of appeals for the second circuit. 95

THE UNITED STATES OF AMERICA, appellant, *vs.* JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and JOHN E. HEYWOOD, composing the copartnership of Alexander Murphy & Company, appellees.	"A," Suit No. 2107.

To the United States circuit court of appeals for the second circuit: 96

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States circuit court of appeals for the second circuit from the decision and judgment of the U. S. circuit court rendered herein and entered on the 25th day of June, 1895.

Dated, New York, June 27th, 1895.

JUDSON HARMON,
Attorney-General,
Per WALLACE MACFARLANE,
U. S. Attorney.

33 The foregoing application is granted and appeal allowed. 97
Dated, New York, June 27th, 1895.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

(Endorsed:) "A," Suit No. 2107. U. S. circuit court of appeals for the second circuit. The United States of America, appellant,

vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Company. Application for an allowance of
98 appeal. Wallace Macfarlane, U. S. attorney. To Curie, Smith & Mackie, esqs., attorneys for appellees. Due service of a copy of the within is hereby admitted. Dated, New York, June 27, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

99

100 34 UNITED STATES OF AMERICA, *ss:*

To John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, importers:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York on the 24th day of July, 1895, pursuant to an appeal on the part of the United States filed in the clerk's office of the circuit court of the United States for the southern district of New
101 York in a certain suit or proceeding entitled "The United States of America, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, appellees," to show cause, if any there be, why the decision of the U. S. circuit court in the said appeal mentioned should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York in the southern district of New York on the 27th day of June, 1895.

E. HENRY LACOMBE,
102 *Judge of the U. S. Circuit Court of Appeals for the Second Circuit.*

WALLACE MACFARLANE,
U. S. Attorney, on behalf of the United States, Appellant.

103 35 (Endorsed:) "A," Suit No. 2107. U. S. circuit court of appeals for the second circuit. The United States of America, appellant, vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Co., appellees. Citation. Wallace Macfarlane, U. S. attorney. To Curie, Smith & Mackie, esqs., attorneys for appellees. Due service of a copy of the within citation is hereby admitted. Dated, New York, June 27, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

104 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-one inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The

United States, appellant, against Alexander Murphy & Company, appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to 105
be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22d day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of the independence of the said United States the one hundred and twentieth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

36 United States circuit court of appeals for the second circuit. No. 108. October term, 1895. Submitted March 11, 1896. Decided March 17, 1896. In error to the circuit court of the United States for the southern district of New York.

THE UNITED STATES, APPELLANT,
vs.
ALEXANDER MURPHY & CO., APPELLEES.

Before Judges Wallace, Lacombe, and Shipman.

This is an appeal from the decision of the circuit court, southern district of New York, reversing a decision of the Board of General Appraisers, which affirmed the collector of the port of New York in the classification for customs duties of certain merchandise imported by the appellees.

LACOMBE, Circuit Judge: The articles in question were entered from the steamship "Waesland" August 29–30, 1894. The Board of Appraisers found them to be women's and children's dress goods composed of worsted, and the correctness of that finding is conceded. The importers claim they were dutiable under the Wilson tariff, then in force, being the act of August 28, 1894. Paragraph 283 of that act provides as follows:

"283. On women's and children's dress goods, coat linings, Italian cloth, bunting, or goods of similar description or character, and
37 on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, * * * valued at not over fifty cents per pound, forty per centum ad valorem; valued at more than fifty cents per pound, fifty per centum ad valorem."

The collector assessed them for duty under paragraph 395 of the McKinley tariff, being the act of October 1, 1890, which paragraph reads as follows:

"395. On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description or character composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad valorem."

The collector claimed to find authority for classifying these worsted dress goods under the act of 1890, instead of under the act of 1894, in paragraph 297 of the latter act, which reads as follows:

"297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, 1895."

On behalf of the Government it is contended that the words "manufactures of wool" as used in that paragraph are to be given the broadest

construction and to be held to include "manufactures of worsted," although it is apparent from paragraph 283, above quoted, that the framers of that act evidently understood that "manufactures of wool," "manufactures of worsted," "manufactures of camel hair," and "manufactures of goat hair" were different articles. It is unnecessary to discuss this contention. We entirely concur in the opinion of the judge who heard the case in the circuit court, which opinion will be found reported (68 Fed. Rep., 908).

An additional argument is present here which does not seem to have been pressed upon the circuit court.

On May 9, 1890, while the tariff of 1883 was in force, Congress
38 passed what is known as the Dingley Act (Chap. 200, Laws 1890, 26 Stat. at Large, 105). It reads as follows:

"An act providing for the classification of worsted cloths as woolens."

"That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the names of worsted or diagonals or otherwise."

Counsel for the Government contends that this act was intended to abrogate the old rule of construction based on commercial designation; that worsteds were thereafter not to be classified as woolens, and that therefore it was a permanent instruction to be followed by customs officers, until expressly repealed, irrespective of whatever changes might subsequently be made in rates of duty on woolen or on worsted cloth.

If the Dingley Act were given the construction approved by the circuit court in the southern district of New York in Ballins vs. U. S. (45 Fed. Rep., 170), there might be force in this contention. It was held in that case that this statute was purely administrative, regulating a special method of classification, to be carried out by official action of the Secretary of the Treasury, and with nothing on its face to indicate that it was intended to repeal or in any way alter any act imposing customs duties. If it were a mere administrative regulation, it might fairly be urged that it would remain in force until some other administrative statute prescribed some different method of classification. But the difficulty here is that this decision of the circuit court was reversed by the Supreme Court. U. S. v. Ballin (114 U. S., 1). That court held that it was a self-executing act providing for a rate of duty on worsted cloths. In other words, its effect was to amend the tariff of 1883 by inserting therein a provision for worsted cloths, laying upon such cloths the same rate of duty as that tariff prescribed for woolen cloths. Subsequently the McKinley Act of October 1, 1890, was passed. It contains
39 paragraphs covering the entire field of wool and worsted manufactures, including woolen cloths and worsted cloths, and of course superseded the earlier tariff act of 1883 and the Dingley Act, which, as construed by the Supreme Court, was simply an amendment of that act. In re Straus (46 F. R., 522); Kent vs. U. S. (68 Fed. Rep., 536).

The Dingley Act, therefore, is no longer in force.

The decision of the circuit court is affirmed.

Wallace Macfarlane, United States attorney, for the appellant; William Wickham Smith, for the appellee.

40 At a stated term of the U. S. circuit court of appeals for the second circuit, held at the U. S. post-office and court-house building in the city of New York, on the 7th day of April, 1896.

Present, The Hon. Wm. J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

THE UNITED STATES, APPELLANT,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, AND John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. } Suit A, ≠ 2107.

An appeal having been duly taken in this court from a judgment of the circuit court of the United States for the southern district of New York, entered June 24th, 1895, and said appeal coming on to be heard;

Now, after hearing Wallace Macfarlane, esq., U. S. attorney, of counsel for appellant, for reversal, and W. Wickham Smith, esq., of counsel for appellees, for affirmance, and due deliberation having been had;

On motion of Curie, Smith & Mackie, attorneys for appellees,

It is ordered, adjudged, and decreed that the judgment of the said circuit court of the United States for the southern district of New York be, and the same hereby is, in all things affirmed; and it is further ordered that mandate issue to the said circuit court, directing that court to make and enter a judgment herein reversing the decision of the Board of General Appraisers in this case.

W. J. W.
E. H. L.
N. S.

Consented to as to form.

WALLACE MACFARLANE,
U. S. Atty.

(Endorsed:) ≠2107. U. S. circuit court of appeals, second circuit. The United States, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. Order for mandate. Curie, Smith & Mackie, attys. for importers, ≠46 Exchange Place, N. Y. City. United States circuit court of appeals, second circuit. Filed Apr. 7, 1896. James C. Reed, clerk.

41 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 40, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees, Suit A, ≠2107, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of

New York, in the second circuit, this eighth day of April, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

[SEAL.] JAMES C. REED, *Clerk.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which The United States is appellant and Alexander Murphy & Co. are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the
43 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of May, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

44 (Indorsed:) Supreme Court of the United States. No. 974, October term, 1895. The United States vs. Alexander Murphy & Co. Writ of certiorari.

45 In the Supreme Court of the United States. October term, 1895.

THE UNITED STATES
vs. } No. 974.
ALEXANDER MURPHY & CO.

On a writ of certiorari to the circuit court of appeals for the second circuit.

STIPULATION.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the circuit court of appeals for the second circuit, now on file in the Supreme Court, may be treated as the return to the writ of certiorari herein.

HOLMES CONRAD,
Solicitor-General.

W. WICKHAM SMITH,
Counsel for Respondent.

A copy.

[SEAL.] JAMES C. REED, *Clerk.*

46 *To the Honorable the Supreme Court of the United States:*

The record and all the proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, May 14, 1896.

[SEAL.] JAMES C. REED,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

47 (Indorsed:) Case No. 16264. Supreme Court U. S. October term, 1896. Term No., 498. The United States, appt., vs. Alexander Murphy & Co. Writ of certiorari and return. Office Supreme Court U. S. Filed May 18, 1896. James H. McKenney, clerk.